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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

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PARKER MALMSTROM and CRYSTAL  
MALMSTROM,

Plaintiffs,

v.

STATE OF UTAH DEPARTMENT OF  
CHILDREN AND FAMILIES, et al.,

Defendants.

**MEMORANDUM DECISION AND  
ORDER ADOPTING [102] REPORT  
AND RECOMMENDATION**

Case No. 1:17-cv-80-DN-EJF

District Judge David Nuffer

Magistrate Judge Evelyn J. Furse

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The Report and Recommendation<sup>1</sup> issued by United States Magistrate Judge Evelyn J. Furse on January 11, 2018 recommends<sup>2</sup> that all of Plaintiff Parker Malmstrom's claims<sup>3</sup> against Nancy Trotter, Thomas Malmstrom, and David Blum be dismissed without prejudice for lack of subject matter jurisdiction.<sup>4</sup>

The parties were notified of their right to file objections to the Report and Recommendation within 14 days of its service pursuant to [28 U.S.C. § 636](#) and [Fed. R. Civ. P. 72](#).<sup>5</sup> As Plaintiffs were mailed a copy of the Report and Recommendation, they were provided an

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<sup>1</sup> Report and Recommendation: David Blum, Thomas Malmstrom & Nancy Trotter's Motion to Dismiss (ECF No. 11), [docket no. 102](#), filed January 11, 2017.

<sup>2</sup> *Id.* at 12.

<sup>3</sup> Pro se Plaintiff Parker Malmstrom filed his Complaint on May 16, 2017. *See* Complaint, [docket no. 1](#), filed May 17, 2017. He then filed an Amended Complaint on May 16, 2017. *See* Amended Complaint, [docket no. 3](#), filed May 23, 2017. The Amended Complaint joined his mother, Crystal Malmstrom, as a Plaintiff. *See Id.* At Oral Argument, Crystal Malmstrom clarified that she is only bringing claims against Defendant Jacob Smith. *See* Minute Order, Proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing, docket no. 88, filed September 12, 2017. Because of this clarification, the Report and Recommendation only address Parker Malmstrom's claims against Nancy Trotter, Thomas Malmstrom, and David Blum.

<sup>4</sup> *See* Defendants Blum, Malmstrom and Trotter's Motion to Dismiss, [docket no. 11](#), filed June 1, 2017.

<sup>5</sup> *See* Report and Recommendation at 12.

additional three days to file their objection under [Fed. R. Civ. P. 6\(d\)](#). Because the last day of the 17 day period to file an objection would have been Sunday, January 28, 2018, the objection period was extended one day until the end of Monday, January 29, 2018 under [Fed. R. Civ. P. 6\(a\)\(1\)\(C\)](#).

On January 30, 2018, Plaintiffs filed a document entitled “Objection to Magistrate’s Decision and Order Or Motion to Set Aside Magistrate’s.”<sup>6</sup> The document does not specify which Report and Recommendation is the subject of the objection and it does not appear to deal with subjects in this Report and Recommendation. In addition to the lack of specificity, the filing<sup>7</sup> is untimely as to this Report and Recommendation. Because no party filed a timely written objection to the Report and Recommendation as provided by court rules,<sup>8</sup> and because the analysis and conclusion are sound, the Report and Recommendation<sup>9</sup> is adopted in its entirety.

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<sup>6</sup> [Docket no. 107](#), filed January 30, 2018.

<sup>7</sup> *Id.*

<sup>8</sup> See [28 U.S.C. § 636](#) and [Fed. R. Civ. P. 72](#)

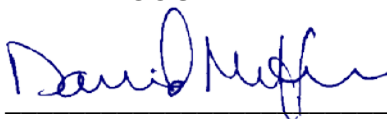
<sup>9</sup> Report and Recommendation: David Blum, Thomas Malmstrom & Nancy Trotter’s Motion to Dismiss (ECF No. 11), [docket no. 102](#), filed January 11, 2017.

## ORDER

IT IS HEREBY ORDERED that the Report and Recommendation<sup>10</sup> is ADOPTED and Defendants Blum, Malmstrom and Trotter's Motion to Dismiss<sup>11</sup> is GRANTED. Plaintiff Parker Malmstrom's claims against Nancy Trotter, Thomas Malmstrom, and David Blum are dismissed without prejudice for lack of subject matter jurisdiction.

Signed February 7, 2018.

BY THE COURT



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David Nuffer  
United States District Judge

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<sup>10</sup> Report and Recommendation: David Blum, Thomas Malmstrom & Nancy Trotter's Motion to Dismiss (ECF No. 11), [docket no. 102](#), filed January 11, 2017.

<sup>11</sup> Defendants Blum, Malmstrom and Trotter's Motion to Dismiss, [docket no. 11](#), filed June 1, 2017.